



## **FEDERAL TRADE COMMISSION**

### **16 CFR Part 305**

### **RIN 3084-AB15**

### **Energy Labeling Rule**

**AGENCY:** Federal Trade Commission.

**ACTION:** Advance notice of proposed rulemaking (ANPR).

**SUMMARY:** The Federal Trade Commission (FTC or Commission) seeks public comment on potential amendments to the Energy Labeling Rule (Rule), including energy labels for several new consumer product categories, and other possible amendments to improve the Rule’s effectiveness and reduce unnecessary burdens.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

**INFORMATION** section below. Write “Energy Labeling Rule ANPR, Matter No. R611004” on your comment, and file your comment online at

<https://www.regulations.gov/>, by following the instructions on the web-based form. If

you prefer to file your comment on paper, mail your comment to the following address:

Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600

Pennsylvania Avenue NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome (202-326-2889), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Overview**

The Commission seeks comment on amendments to its existing Energy Labeling Rule at 16 CFR Part 305. As discussed below, the Commission specifically seeks comment on whether it should add new consumer product categories to the labeling program, increase the availability of online labels and other energy information, and streamline existing requirements. The Commission also seeks comment on whether any Rule changes are necessary to ensure the Rule's labeling provisions are consistent with current consumer shopping behavior. Finally, the ANPR seeks comment on whether the Commission should amend the Rule to: (1) modify its label content and format, (2) require links to online Lighting Facts labels consistent with current EnergyGuide requirements, (3) update the electricity cost figure on the Lighting Facts and ceiling fan labels, (4) update the refrigerator and clothes washer labels to remove dated information about test procedures, and (5) ensure the Rule's consistency with Department of Energy (DOE) requirements.

## **II. Background**

The Commission issued the Energy Labeling Rule in 1979,<sup>1</sup> pursuant to the Energy Policy and Conservation Act of 1975 (EPCA).<sup>2</sup> The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models. It also contains labeling requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room and portable air conditioners, furnaces, central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels to many covered products and prohibits retailers from removing these labels or rendering them illegible. In addition, it directs sellers, including retailers, to post label information on

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<sup>1</sup> 44 FR 66466 (Nov. 19, 1979).

<sup>2</sup> 42 U.S.C. 6294. EPCA also requires the Department of Energy (DOE) to develop test procedures that measure how much energy appliances use, and to determine the representative average cost a consumer pays for different types of energy.

websites and in paper catalogs from which consumers can order products. EnergyGuide labels for most covered products contain three main disclosures: estimated annual energy cost, a product's energy consumption or energy efficiency rating as determined by DOE test procedures, and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. The Rule requires marketers to use national average costs for applicable energy sources (*e.g.*, electricity, natural gas, or oil), as calculated by DOE in all cost calculations. Under the Rule, the Commission periodically updates comparability range and annual energy cost information based on manufacturer data submitted pursuant to the Rule's reporting requirements.<sup>3</sup>

### **III. Potential Rule Improvements**

#### **A. Potential Labels for New Product Categories**

The Commission seeks comment on whether to add several new product categories to the energy labeling program. Under EPCA, FTC has broad authority to require energy labels for consumer products. Specifically, in addition to products named in the statute or designated by DOE under that agency's authority, FTC may require labels pursuant to 42 U.S.C. 6292(a)(6) for any consumer product as long as a label "is likely to assist consumers in making purchasing decisions."<sup>4</sup> The Commission seeks comment on potential new labels for (1) the product categories listed below, and (2) any other consumer products that may be appropriate for energy labels. The Commission has not made any final determination regarding whether energy labels are warranted for any of the products discussed below at III.A.2.

In considering the product types listed below or other potential products,

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<sup>3</sup> 16 CFR 305.12.

<sup>4</sup> 42 U.S.C. 6294(a)(6); *see* 42 U.S.C. 6291(1) (defining "consumer product"). For additional FTC labeling authority, *see* 42 U.S.C. 6292(a)(1)-(5). For new product categories that DOE classifies as "covered" pursuant to 42 U.S.C. 6292(b), the FTC may prescribe labeling under 42 U.S.C. 6294(a)(3) if (1) the Commission determines labeling will assist purchasers in making purchasing decisions, (2) DOE has prescribed test procedures for the product class, and (3) the Commission concludes labeling for the class is economically and technologically feasible.

commenters should address any issues relevant to whether the Commission should require labeling for specific product categories. Typically, energy labels are most likely to help consumers when the underlying products use a substantial amount of energy and exhibit a range of annual energy costs across competing similar models. In addition to requiring energy use figures, the Commission has authority to require disclosures of additional information relating to energy consumption, including instructions for maintenance, use, or repair. 42 U.S.C. 6294(c)(5). If no DOE test procedure exists for a particular product type, commenters should address whether competent and reliable test procedures exist that will yield adequate, consistent estimated energy use disclosures on the labels.

### **1. Questions About New Labels**

The Commission invites commenters to provide information and views on the following issues for the products listed below, as well as any other consumer products that may warrant energy labels. Where appropriate, commenters should provide evidence to support their views:

- Whether labels will assist consumers in their purchasing decisions, and why;
- The typical energy use and energy efficiency of various models on the market;
- Whether, and how, potential market changes will affect label benefits (*e.g.*, expected changes in future models);
- The annual energy costs differences between similarly sized or otherwise competing models for each product category;
- What, if any, test procedures are or will likely be available to measure the estimated annual energy costs (or another useful energy metric) for the product category;
- What, if any, particular labeling burdens would apply to these products that are larger or different from currently labeled products;

- Any estimates (*e.g.*, hours per year) for consumers' typical annual use of the product (*i.e.*, "duty cycle") that can provide a basis for an annual energy cost estimate;
- Whether and how the energy use varies among similarly sized (or otherwise competing) models;
- Typical methods by which these products are sold (*e.g.*, in retail stores packed in boxes, in stores displayed out of the boxes, online, through professional installers, etc.);
- How consumers typically shop (*i.e.*, make purchasing decisions) for the products, and whether they shop online, in stores, or through some other means (*e.g.*, discussions at home with installers);
- What, if any, subgroupings are appropriate for product categories by size, configuration, fuel used, or type (please provide specific information);
- Whether and why range information would be useful on the label and, if so, whether such range data is available;
- Whether and why labels for the product should appear on boxes, the products themselves, or through some other location or means;
- Any particular burdens associated with labeling specific product categories; and
- Whether the labels should provide any other available information about those products relevant to their energy consumption and consumer use.

## **2. List of Potential New Product Categories**

*Clothes Dryers:* EPCA designates clothes dryers as covered products in 42 U.S.C. 6292. In 1979, the Commission declined to require labels for clothes dryers after finding models on the market had a limited range of energy use.<sup>5</sup> In 2014, the Commission

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<sup>5</sup> 44 FR 66466, 66469. Under EPCA, the Commission must prescribe labels for dryers unless it finds labeling would not be technologically or economically feasible. 42 U.S.C. 6294(a)(1). In initially promulgating the Rule in 1979, the Commission, after examining the statute and statutory history, concluded "that Congress['s] intent was to permit the exclusion of any product category, if the Commission found that the costs of the labeling

reconsidered clothes dryer labels, and again declined to require them, concluding that dryer information continued to suggest that model efficiency varied little across available models.<sup>6</sup> However, the Commission recognized that electric dryers using emerging heat pump technology had lower annual energy costs compared to conventional models. At that time, few, if any, such models were available in the U.S. Now, however, heat pump models appear to be more prevalent. For example, the U.S. Environmental Protection Agency (EPA) ENERGY STAR website ([www.energy.gov](http://www.energy.gov)) lists about two dozen heat pump models as qualifying under that program. This current data suggests the Commission should revisit requiring labels for clothes dryers.

*Air Cleaners (“Air Purifiers”)*: Air purifiers use significant amounts of energy and exhibit a substantial range of energy use. In addition, in January 2022, DOE published a Request for Information on possible test procedures and conservation standards for these products.<sup>7</sup> In July 2022, DOE determined that that consumer air cleaners qualify as a “covered product” under EPCA.<sup>8</sup> Furthermore, the ENERGY STAR program covers room air cleaners and requires participating manufacturers to test the operating mode power of their models using “ANSI/AHAM AC-1-2015: Method of Measuring the Performance of Portable Household Electric Room Air Measurement of Operating Power Cleaners.” Recent data compiled by the ENERGY STAR program shows models rated for room sizes between 150 and 299 square feet range in annual energy use from about 50 kWh/yr to 360 kWh/yr, resulting in an estimated annual energy cost difference of more than \$30 per year in energy costs (assuming \$0.14/kWh).<sup>9</sup>

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program would substantially outweigh any potential benefits to consumers.” 44 FR 66466, 66467–68.

<sup>6</sup> 79 FR 34642, 34659 (June 18, 2014).

<sup>7</sup> 87 FR 3702 (Jan. 26, 2022). In March 2022, DOE reopened the comment period. 87 FR 11326 (Mar. 1, 2022).

<sup>8</sup> 87 FR 42297 (July 15, 2022).

<sup>9</sup> See, e.g., <https://www.energystar.gov/productfinder/product/certified-room-air-cleaners/results>. EPCA does not include air cleaners in its list of covered products, but the Commission has authority under 42 U.S.C. 6294(a)(3) to require labeling if DOE

Finally, media reports suggest there are ongoing concerns in the market about the consistency of advertised flow rate or capacity claims (*e.g.*, recommended room sizes).<sup>10</sup> FTC labeling requirements mandating specific test procedure requirements would ensure consumers have uniform information about competing models.

*Miscellaneous Refrigerator Products:* DOE has designated miscellaneous refrigerators (MREFs) as covered products under EPCA. The category includes coolers (*e.g.*, wine chillers) and combination cooler refrigeration products (*i.e.*, products with warm and cool compartments). Within this category, some similarly sized models appear to exhibit a significant range of energy use. For example, recent DOE data indicates freestanding compact cooler models between 3 and 7 cubic feet range in annual energy use between about 100 to 205 kWh/yr.<sup>11</sup> DOE currently has test procedures and standards for these products.<sup>12</sup>

*Additional Lamps (Light Bulbs):* The Rule does not currently require labels for all types of lower-brightness lamps (*i.e.*, light bulbs). However, these products can consume a significant amount of energy. Specifically, the current coverage does not include lamps lower than 310 lumens and 30 watts. This leaves certain lamp types, particularly 25-watt incandescent bulbs, uncovered. A single such incandescent bulb can cost consumers more than \$3 per year in electricity costs, which can add up if multiple bulbs are used in a home. The LED equivalent for such bulbs, however, has an annual energy cost of about

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designates them as “covered products.” 42 U.S.C. 6292. Additionally, regardless of DOE’s efforts, the Commission has authority to require labels for room air cleaners pursuant to its general labeling authority under 42 U.S.C. 6294(a)(6) if it determines that labeling “is likely to assist consumers in making purchasing decisions.”

<sup>10</sup> See, *e.g.*, <https://www.allergybuyersclub.com/learning/air-filter-seven-sins.html> and <https://www.bobvila.com/articles/best-air-purifier-for-smoke/>.

<sup>11</sup> See DOE Compliance Certification Management System, <https://www.regulations.doe.gov/ccms>.

<sup>12</sup> Pursuant 42 U.S.C. 6294(a)(3), the Commission has authority to require labels on MREFs that DOE designates as covered products pursuant to 42 U.S.C. 6292(b). DOE issued final test procedures and standards for MREFs in 2016. 81 FR 46768 (July 18, 2016) (test procedure); 81 FR 75194 (Oct. 28, 2016) (standards); *see also* 79 FR 78736, 78737 (Dec. 31, 2014) (FTC request for comments following proposed DOE test procedure).

50 cents. These products are not currently covered by DOE standards. However, the FTC has authority to require labeling for them under 42 U.S.C. 6294(a)(6). In addition to the general questions listed above, commenters should address whether the Commission should amend the Rule’s coverage to include such lower brightness bulbs or any other lighting products (*e.g.*, full color “tunable” lamps with adjustable color and CCT).<sup>13</sup>

*Residential Ice Makers:* Consumers can purchase residential icemakers in various configurations, including portable, non-portable, uncooled storage, and non-portable, cooled storage units. Residential models generally produce fewer than 50 pounds of ice per hour. There are currently no DOE standards or test procedure requirements specifically for these models. DOE tested these products in 2014 and found tested models used significant energy. The DOE data also suggested a significant range of energy consumption may exist among models offered in the market.<sup>14</sup> Although DOE developed and applied a test procedure for ice makers for research purposes, it ultimately did not publish a test procedure for these products.

In addition to the general questions listed above, the Commission seeks comment on which capacity categories should apply to consumer (residential) models for labeling purposes, and whether DOE’s test procedure for commercial icemakers can be used as a basis for EnergyGuide labels for residential models.

*Humidifiers:* Consumers use residential humidifiers, including portable and whole-house devices, either to increase or maintain the humidity levels in all or parts of the home or to ease illness symptoms.<sup>15</sup> There are currently no DOE standards or test

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<sup>13</sup> In the past, the Commission has looked beyond DOE’s specific lamp definitions, which generally cover products subject to DOE’s efficiency standards, to include products designated as “specialty consumer lamps” using its general labeling authority at 42 U.S.C. 6294(a)(6). 80 FR 67285 (Nov. 2, 2015).

<sup>14</sup> See Preliminary Technical Support Document EERE-2011-BT-STD-0043-0024, Section 7.2.3 and Table 7.2.4, DOE, <https://beta.regulations.gov/document/EERE-2011-BT-STD-0043-0024>.

<sup>15</sup> See 42 U.S.C. 6294(a)(6) (general labeling authority). For dehumidifiers, EPCA contains a specific prohibition for an “Energy Guide” label requirement. 42 U.S.C.



procedures for these products. A 2012 EPA ENERGY STAR report suggested differences in energy consumption among competing humidifiers, particularly for whole-house models.<sup>16</sup> The report also stated there is “very little, if any, correlation between humidification capacity (in square feet) and watt rating.” The report concluded, by choosing energy-efficient humidifiers, consumers could collectively save an estimated 3.4 terawatts of electricity over the lifetime of these products, equating to nearly \$400,000,000. However, the report indicated there was no standard test procedure for measuring the energy consumption of portable models.

*Miscellaneous Gas Products (“Hearth Products”)*: In February 2022, DOE tentatively determined that miscellaneous gas products, which are comprised of decorative hearths and outdoor heaters, qualify as covered products under EPCA.<sup>17</sup> These products include fireplaces, fire pits, and other similar products that have decorative purposes, but can also provide heat. DOE proposed to define “decorative hearth product” as gas-fired appliances that: simulate a solid-fueled fireplace or present a flame pattern; include products designed for indoor and/or outdoor use; are not designed to be operated with a thermostat; are not designed to provide space heating to the indoor space in which they are installed; and are not designed to provide heat proximate to the unit. DOE estimates indicate that these products can consume substantial energy.<sup>18</sup> In addition to the general questions above, the Commission requests comment on whether the Commission

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6294(a)(5)(c).

<sup>16</sup> ENERGY STAR Market & Industry Scoping Report Residential Humidifiers October 2012.

[https://www.energystar.gov/sites/default/files/asset/document/ENERGY\\_STAR\\_Scoping\\_Report\\_Residential\\_Humidifiers.pdf](https://www.energystar.gov/sites/default/files/asset/document/ENERGY_STAR_Scoping_Report_Residential_Humidifiers.pdf).

<sup>17</sup> 87 FR 6786 (Feb. 7, 2022).

<sup>18</sup> For example, DOE estimated the calculated per household weighted average ignition energy of use of outdoor heaters to be 0.7 MMBtu/yr and the weighted burner energy use to be 2.2 MMBtu/yr, for total outdoor heater household energy use of 2.9 MMBtu/yr (859 kWh/yr), and estimated the weighted average (indoor and outdoor products) per-household energy use of a miscellaneous gas product to be 4.1 MMBtu/yr (1,211 kWh/yr). 87 FR at 6792. DOE also discussed these general issues in 2013. 78 FR 79638, 79640 (Dec. 31, 2013). There is currently no DOE test procedure for these products.

should consider labeling for related products outside of DOE's current proposal (e.g., electric models) and whether test procedures are or are likely to be available for such products.<sup>19</sup>

*Cooking Tops:* EPCA lists "kitchen ranges and ovens" as covered products.<sup>20</sup> In 1979, the Commission decided not to require labels for cooking tops, as well as ranges and ovens, citing the small variability of energy use between models.<sup>21</sup> More recent information from DOE, however, suggests the Commission should revisit the issue. Specifically, DOE research found that energy consumption for gas cooking top models may vary significantly depending on burner and grate design. DOE also noted energy consumption among similar electric cooking top models can vary depending on whether the product employs induction or resistance heating or has smooth or coil elements.<sup>22</sup>

In August 2020, DOE withdrew its test procedure for these products,<sup>23</sup> citing concerns about whether the procedure yielded representative results for average use.<sup>24</sup> In February 2021, DOE listed the cooking products test procedure withdrawal as one of thirteen rulemakings the agency would reconsider pursuant to Executive Order 13990.<sup>25</sup> In July 2022, DOE reestablished a test procedure for conventional cooking tops.<sup>26</sup>

In addition to questions regarding whether labeling cooking tops would help consumers in their purchasing decisions, the Commission seeks comment on whether

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<sup>19</sup> The Commission also seeks comment on whether the Rule should contain any affirmative energy disclosures or labels for furnace fans, which are components of products already labeled under the Rule. *See* 79 FR 38129 (July 3, 2014) (DOE standards for furnace fans).

<sup>20</sup> 42 U.S.C. 6292(a)(10).

<sup>21</sup> 44 FR 66466, 66469 (Nov. 19, 1979) ("Since the substantial costs of a labeling requirement would not produce corresponding consumer benefits, the Commission has determined that labeling of kitchen ranges and ovens would not be economically feasible.").

<sup>22</sup> 81 FR 60784, 60800-60802 (Sept. 2, 2016).

<sup>23</sup> 85 FR 50757 (Aug. 18, 2020).

<sup>24</sup> In December 2020, DOE also sought comments on revised standards for these products. 85 FR 80982 (Dec. 14, 2020).

<sup>25</sup> *See* [https://www.energy.gov/sites/prod/files/2021/02/f82/eere\\_eo13990\\_memo\\_1.pdf](https://www.energy.gov/sites/prod/files/2021/02/f82/eere_eo13990_memo_1.pdf).

<sup>26</sup> *See* <https://www.energy.gov/sites/default/files/2022-07/cookingproducts-tp-fr.pdf>; 86 FR 60974 (Nov. 4, 2021) (results of round robin testing).

there is an alternative test procedure the agency could use for EnergyGuide labels.

*Electric Spas:* In February 2022, DOE published a tentative determination that portable electric spas qualify as a covered product under EPCA and followed up with a final coverage determination in September 2022.<sup>27</sup> DOE estimated more than 3 million households in the U.S. operate portable electric spas regularly, using approximately and an estimated average energy consumption of 1,699 kWh per year per household (~\$238/yr).

## **B. Matching Label Format and Location to Consumer Shopping Patterns**

The Commission also seeks comment on whether any Rule changes are necessary to ensure current labeling requirements are consistent with current consumer shopping behavior. For several product categories (*e.g.*, refrigerators, clothes washers, dishwashers, and televisions), the Rule currently requires manufacturers to affix labels to units themselves. However, of the millions of units produced each year, only a tiny fraction are actually displayed on a showroom floor. For products typically displayed in packaging (*e.g.*, room air conditioners, lighting, ceiling fans, and lighting products), the Rule requires manufacturers to incorporate the label on the packaging. For products sold online, the Rule requires retail sellers to include label information on product pages. To aid retailers with this function, manufacturers must make their EnergyGuide labels available on a website and report that website to the FTC, which they can do via the DOE Compliance Certification Management System (CCMS).

Under EPCA, the Commission must “require that each covered product in the type or class of covered products to which the rule applies bear a label” disclosing energy use information. 42 U.S.C. 6294(c)(1). However, EPCA provides flexibility for the Commission to determine the placement of labels in a manner likely to assist consumers

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<sup>27</sup> 87 FR 8745 (Feb. 16, 2022); 87 FR 54123 (Sept. 2, 2022).

in making purchasing decisions.<sup>28</sup> In addition, the statute gives FTC authority to require retailers to provide labels and other disclosures for consumers, both on websites and in stores.<sup>29</sup>

Pursuant to this authority, the Commission seeks comment on whether it should amend the current approach in light of contemporary retail and consumer practices. Specifically, the Commission solicits comments on alternatives to the current “showroom-ready” approach. Such changes could include requiring retailers to affix showroom labels (provided by the manufacturer) for the small number of units that are displayed, allowing manufacturers to include labels on or in product packaging (*e.g.*, on product boxes, literature packs, instruction manuals, and through QR codes) in lieu of affixing labels separately to every unit itself, and/or requiring retailers to provide label information in some other method or location. The Commission additionally requests any recent research or data demonstrating when and where consumers typically make purchasing decisions for the types of products covered by the Rule. Examples of relevant information include:

- What percentage of consumers rely solely on showroom visits to obtain information about their purchases, particularly for products that currently bear a label

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<sup>28</sup> 42 U.S.C. 6294(c)(3) (“A rule under this section shall require that the label be displayed in a manner that the Commission determines is likely to assist consumers in making purchasing decisions and is appropriate to carry out this part.”).

<sup>29</sup> EPCA authorizes the Commission to prescribe labeling rules under this section applicable to all covered products, including rules governing label disclosures at the point of sale. *See* 42 U.S.C. 6294(c)(3) and (c)(4) (“(4) A rule under this section applicable to a covered product may require disclosure, in any printed matter displayed or distributed at the point of sale of such product, of any information which may be required under this section to be disclosed on the label of such product”); *see also* 42 U.S.C. 6298 (authorizing the Commission to issue rules it “deems necessary to carry out” the law’s provisions). The Rule already contains affirmative obligations for retailers to display labels to customers for particular product categories. *See, e.g.*, 16 CFR 305.22(b)(2)(ii) (requiring retailers to show consumers the labels for covered central air conditioners, heat pumps, or furnaces prior to purchase); 16 CFR 305.26 (requiring retailers to make written disclosures at point-of-sale). In 2014, the Commission sought comment on whether it should require retailers to affix labels on units they display in their showrooms. 79 FR 34642, 34658 (June 18, 2014).

directly on the unit (*e.g.*, refrigerators)?

- What percentage of consumers research and compare models online before their purchases?
- Should the Commission eliminate requirements for manufacturers to place labels directly on products typically displayed in showrooms (*e.g.*, refrigerators, clothes washers, dishwashers, and televisions), and require manufacturers to provide the labels with the product in a different way (*e.g.*, on packaging, instruction manuals, or literature bags)?
- Should the Rule require retailers to display the EnergyGuide label for those individual units they choose to display out of packages in their showrooms?

### **C. Repair Instructions**

The Commission also seeks comment on potential requirements related to repair instructions. Under EPCA (42 USC 6294(c)(5)), the Commission has authority to require manufacturers to provide consumers with “additional information relating to energy consumption, including instructions for the maintenance, use, or repair of the covered product” if the Commission finds such information would assist with purchase decisions or in the use of the product, and would not be unduly burdensome to manufacturers. The Commission seeks comment on whether, for any product covered, the Rule should require manufacturers to provide consumers with access to repair instructions (with updates). Specifically, comments should address whether lack of access to repair instructions for covered products is an existing problem for consumers; whether providing such information would assist consumers in their purchasing decisions or product use; whether providing such information would be unduly burdensome to manufacturers; and any other relevant issues.

### **D. General Label Content and Format Requirements**

The Commission also seeks comment on whether it should consider changes to

the Rule's label content and format requirements. Specifically, commenters should consider:

- Are there any prescriptive requirements (*e.g.*, type size and style, label size, number of picas, paper weight, and label attachment provisions) in the Rule that are unnecessarily burdensome? If so, would elimination of such requirements create inconsistencies in the label appearance that would reduce consumer confidence in the label, or reduce its utility and use?
- Are there any improvements the Commission could make to the content of the information on labels (or other locations such as product manuals or websites) to help consumers with their purchasing decisions?<sup>30</sup>
- Is there a role that QR codes may play in conveying useful information to consumers?
- Are there any improvements to the format, size, or layout of the labels that would help consumers with their purchasing decisions?

#### **E. Requiring Links to Online Lighting Facts Labels**

The Commission also seeks comment on whether the Rule should require lamp manufacturers to include information regarding their Lighting Facts labels with their data reports required by the DOE. The Rule already requires manufacturers of other covered consumer products to provide a website address linking to their EnergyGuide labels as part of their required data reports, which manufacturers submit through the DOE reporting system.<sup>31</sup> The Commission did not extend this requirement to Lighting Facts labels in 2016 given appropriation restrictions at the time placed on DOE spending related to light bulbs. Instead, the Commission stated it would revisit the issue at “a later

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<sup>30</sup> See, *e.g.*, National Propane Gas Association recent comments related to full-fuel cycle impacts. FTC-2022-0032-0007 (Jul. 11, 2022) (<https://www.regulations.gov/comment/FTC-2022-0032-0007>).

<sup>31</sup> 81 FR 63634 (Sept. 15, 2016); 16 CFR 305.11 (FTC reporting requirements).

date should circumstances warrant.”<sup>32</sup> The DOE prohibition no longer exists.

Accordingly, the Commission seeks comment on applying the requirements in section 305.11(a)(5) to Lighting Facts labels.

#### **F. Updating Cost Figures for Lighting Facts and Ceiling Fan Labels**

The Commission also seeks comment on whether it should update the electricity cost disclosure on the Lighting Facts and ceiling fan labels to reflect recent DOE national estimates. Currently, the Lighting Facts label uses 11 cents per kWh, while the ceiling fan label uses 12 cents. The current (2022) DOE national estimate for electricity (rounded) is 14 cents per kWh.<sup>33</sup> The Commission seeks comment on whether it should update these numbers and, if so, when the change should become effective to allow manufacturers to incorporate such changes into routine package updates and thus minimize any burden associated with such changes.

#### **G. Phasing Out Transitional Language for Refrigerator and Clothes Washer Labels**

The Commission also seeks comment on whether it should phase out language on refrigerator and clothes washer labels that the Commission added in 2013 to help distinguish models tested with the current DOE procedure from those tested with an older version.<sup>34</sup> This language, which advises consumers to “Compare ONLY to other labels with yellow numbers,” is now obsolete and crowds the label with irrelevant information. The Commission seeks comment on when and how to smoothly transition back to the conventional label.

#### **H. Consistency with DOE Requirements**

The Commission also seeks comment on whether any changes or updates are necessary to the Rule’s requirements (*e.g.*, definitions, product coverage, capacity

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<sup>32</sup> 81 FR 63634, 63636.

<sup>33</sup> 87 FR 12681 (Mar. 7, 2022).

<sup>34</sup> 78 FR 43974 (July 23, 2013).

descriptions, etc.) to ensure consistency, where necessary, with DOE requirements.

#### **G. Bilingual Label Guidance**

The Rule at 16 CFR 305.23(b)(6) and 16 CFR 305.23(c)(4) currently offers guidance to manufacturers who choose to use bilingual labels for Lighting Facts, including guidance on label content and format. Should the Rule offer similar guidance on bilingual labels for the other consumer products covered by the Rule? Are there other improvements that could be made to the Rule that would help non-English speaking or multilingual consumers with their purchasing decisions?

#### **IV. Comment Submissions**

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Energy Labeling Rule ANPR, Matter No. R611004” on your comment. Because of the public health emergency in response to the COVID-19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. As a result, we strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on that website.

If you file your comment on paper, write “Energy Labeling Rule ANPR, Matter No. R611004” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580.



Because your comment will be placed on the publicly accessible website at [www.regulations.gov](http://www.regulations.gov), you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule § 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at [www.regulations.gov](http://www.regulations.gov), we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the

collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

**April J. Tabor,**

*Secretary.*

**Note:** The following statements will not appear in the Code of Federal Regulations:

#### **Statement of Chair Lina M. Khan**

Today, the Commission voted to issue an advance notice of proposed rulemaking seeking comment on proposed improvements to the Energy Labeling Rule. Among other areas, the Notice asks whether consumers and independent repair shops would benefit from repair information being more widely available on energy labels. As I noted when the Commission issued its *Policy Statement on Right to Repair* in July 2021, I believe it is vital that the Commission use every tool available to it to vindicate Americans’ right to repair their own products,<sup>1</sup> and I am pleased that we are continuing to follow through on that commitment here.

The Energy Policy and Conservation Act of 1975 gives the Commission clear statutory authority to require manufacturers to provide consumers with “additional information relating to energy consumption, including instructions for the maintenance, use, or repair of the covered product” if the Commission finds such information would

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<sup>1</sup> Remarks of Chair Lina M. Khan Regarding the Proposed Policy Statement on Right to Repair (July 21, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1592358/p194400khanremarksrighttorepair.pdf](https://www.ftc.gov/system/files/documents/public_statements/1592358/p194400khanremarksrighttorepair.pdf).

assist with purchasing decisions or in the use of the product.<sup>2</sup> For the first time, the Commission is deploying this tool to ask whether consumers and independent repair shops would benefit from having repair information more widely available on energy labels. Such a provision could help consumers more easily repair everything from refrigerators and dishwashers to washing machines, air conditioners, water heaters, and televisions—products currently covered under the Rule—as well as new products that the Commission is considering adding to the Rule, including clothes dryers, air purifiers, humidifiers, hearths and outdoor heaters, cooking tops, and electric spas.

As the FTC’s work has documented,<sup>3</sup> companies routinely use a wide array of practices to restrict Americans from repairing their own products. These restrictions can raise costs for consumers, stifle innovation, close off business opportunity for independent repair shops, create unnecessary electronic waste, delay timely repairs, and undermine resiliency.<sup>4</sup> Today’s action demonstrates the Commission’s commitment to using every tool it has available to advance Americans’ ability to access independent repair. It builds on the *Policy Statement on Right to Repair* that the Commission issued in July 2021, affirming our intent to root out illegal repair restrictions.<sup>5</sup> The Commission has since brought numerous right to repair cases, addressing unlawful repair restrictions affecting a variety of products, including motorcycles and outdoor electric power generators.<sup>6</sup>

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<sup>2</sup> 42 U.S.C. 6294(c)(5).

<sup>3</sup> In July 2019, the Commission held a workshop and a call for research on the prevalence and impact of manufacturers’ repair restrictions. Nixing the Fix: A Workshop on Repair Restrictions, Fed. Trade Comm’n (July 2019), <https://www.ftc.gov/news-events/events/2019/07/nixing-fix-workshop-repair-restrictions>. In May 2021, the Commission issued a report to Congress that identified various types of repair restrictions and explored how the Commission could best address repair restriction concerns. FED. TRADE COMM’N, NIXING THE FIX: AN FTC REPORT TO CONGRESS ON REPAIR RESTRICTIONS (May 2021), [https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing\\_the\\_fix\\_report\\_final\\_5521\\_630pm-508\\_002.pdf](https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf).

<sup>4</sup> Remarks of Chair Lina M. Khan Regarding the Proposed Policy Statement on Right to Repair, *supra* note 1.

<sup>5</sup> Press Release, Fed. Trade Comm’n, FTC to Ramp Up Law Enforcement Against Illegal Repair Restrictions (July 21, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-ramp-law-enforcement-against-illegal-repair-restrictions>.

<sup>6</sup> Press Release, Fed. Trade Comm’n, FTC Takes Action Against Harley-Davidson and Westinghouse for

I thank our staff for their work on this important matter and look forward to hearing from the public during this rulemaking proceeding.

## **Concurring Statement of Commissioner Christine S. Wilson**

Seventh time's a charm.

Today the Commission issues an advance notice of proposed rulemaking (ANPR) seeking comment on possible revisions to the Energy Labeling Rule. Specifically, the ANPR asks whether the Commission should add consumer products to the labeling program, whether the label location and other requirements should be updated to reflect current shopping patterns, and whether the label content should be revised to reduce unnecessary burdens. The document also addresses issues related to reporting and refrigerator labels.

Since 2018, I have urged the Commission to seek comment on the more prescriptive aspects of this Rule.<sup>1</sup> The Commission has a statutory mandate to issue a labeling Rule. I strongly believe, however, that this mandate does not require the Rule to include the highly detailed and prescriptive requirements in the current Rule. For example, the Rule specifies the trim size dimensions for labels, including the precise width (between 5 1/4" to 5 1/2") and length (between 7 3/8" and 7 5/8"); the number of picas for the copy set (between 27 and 29); the type style (Arial) and setting; the weight

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<sup>1</sup> See Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 10, 2018) (expressing my view that the Commission should seek comment on the prescriptive labeling requirements), <https://www.ftc.gov/public-statements/2018/12/dissenting-statement-commissioner-christine-s-wilson-notice-proposed>; Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Oct. 22, 2019) (urging the Commission to seek comment on the labeling requirements), [https://www.ftc.gov/system/files/documents/public\\_statements/1551786/r611004\\_wilson\\_dissent\\_energy\\_labeling\\_rule.pdf](https://www.ftc.gov/system/files/documents/public_statements/1551786/r611004_wilson_dissent_energy_labeling_rule.pdf); Concurring Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Mar. 20, 2020) (commending the Commission decision to seek comment on some of the more prescriptive rule requirements), [https://www.ftc.gov/system/files/documents/public\\_statements/1569815/r611004\\_wilson\\_statement\\_energy\\_labeling\\_rule.pdf](https://www.ftc.gov/system/files/documents/public_statements/1569815/r611004_wilson_statement_energy_labeling_rule.pdf); Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 22, 2020) (dissenting due to the Commission's decision not to make changes to the Rule requirements in response to the March 2020 publication), [https://www.ftc.gov/system/files/documents/public\\_statements/1585242/commission\\_wilson\\_dissenting\\_statement\\_energy\\_labeling\\_rule\\_final12-22-2020revd2.pdf](https://www.ftc.gov/system/files/documents/public_statements/1585242/commission_wilson_dissenting_statement_energy_labeling_rule_final12-22-2020revd2.pdf); Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Amendments to the Energy Labeling Rule (Oct. 6, 2021) (urging again seeking comment on the rule requirements), [https://www.ftc.gov/system/files/documents/public\\_statements/1597166/commission\\_wilson\\_dissenting\\_statement\\_energy\\_labeling\\_rule\\_2021-10-04\\_final.pdf](https://www.ftc.gov/system/files/documents/public_statements/1597166/commission_wilson_dissenting_statement_energy_labeling_rule_2021-10-04_final.pdf); Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking to the Energy Labeling Rule (May 11, 2022) (encouraging the Commission to seek comment on the more prescriptive requirements of the Rule), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Commission%20Wilson%20Dissenting%20Statement%20Energy%20Labeling%20Rule%205.11.22%20FINAL.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Commission%20Wilson%20Dissenting%20Statement%20Energy%20Labeling%20Rule%205.11.22%20FINAL.pdf).

of the paper stock on which the labels are printed (not less than 58 pounds per 500 sheets or equivalent); and a suggested minimum peel adhesive capacity of 12 ounces per square inch.

In 2020, the Commission sought comment on some of these prescriptive provisions and received some helpful and thoughtful comments. Unfortunately, the Commission did not make changes based on those comments but instead chose to make only required conforming changes at that time.<sup>2</sup> I applaud the decision today to seek comment on the Rule more broadly, to ask specifically about these highly prescriptive requirements, and to consider making changes to streamline the Rule. I look forward to reviewing the comments.

[FR Doc. 2022-23063 Filed: 10/24/2022 8:45 am; Publication Date: 10/25/2022]

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<sup>2</sup> See Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 22, 2020) (dissenting due to the Commission's decision not to make changes to the Rule requirements in response to the March 2020 publication), [https://www.ftc.gov/system/files/documents/public\\_statements/1585242/commission\\_wilson\\_dissenting\\_statement\\_energy\\_labeling\\_rule\\_final12-22-2020revd2.pdf](https://www.ftc.gov/system/files/documents/public_statements/1585242/commission_wilson_dissenting_statement_energy_labeling_rule_final12-22-2020revd2.pdf).